IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1116/2005

Reserved on.18.6.2007

Decided on. July 12, 2007

H.P. State Forest Corporation Ltd. …Petitioner.

Versus

Presiding Judge and others. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : **Mr. B.M. Chauhan, Advocate.**

For the respondent No.2 **Mr. K.D. Sood, and Mr. Rajneesh K. Lal, Advocate.**

Rajiv Sharma, J.

A challenge has been laid to the award passed by Labour Court, Shimla decided on 24.8.2005 in reference No. 155/2002.

The brief facts necessary for the adjudication of this petition are that after the failure of the conciliation proceedings, the State Government had made the following reference to the Labour Court, Shimla:

> **"Whether the termination of the services of Sh. Ashok Kumar Sharma S/O Sh. Vidhya Sagar Sharma by the Divisional Manager, Himachal Pradesh State Forest Corporation Ltd. Him-Kanth Sale Depot, Manturwala (Poanta Sahib) Distt. Sirmour, H.P. w.e.f. 20.9.88 without complying the section 25-F/25-N of the Industrial Dispute Act, 1947 is legal and justified? If not, what relief of service benefits including back wages, seniority and amount of compensation Sh. Ashok Kumar is entitled to?"**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the workman) had filed statement of claim stating therein that he was engaged in the month of July, 1986 and had continuously discharged his duties till 20th September, 1988. He had also stated that he was retrenched with effect from 21st September, 1988 without following the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947. The employer had filed the reply to the statement of claim and the principal stand taken before the Labour Court was that the dispute could not be raised after 13 years. It was also stated in the reply that it was a case of abandonment and not retrenchment. The Labour Court had answered the reference in the affirmative on 24.8.2005 holding the workman entitled to reinstatement with 25% back wages from the date of reference i.e. with effect from 21.5.2002.

Mr. B.M. Chauhan had strenuously argued that the dispute could not be raised by the workman since his retrenchment was effected on 1st September, 1988 and the Labour Court should not have decided the matter on its merits.

Mr. K.D. Sood, Advocate had supported the award dated 24.8.2005.

I have heard the parties and perused the record.

The workman had appeared before the Labour Court as PW-1 and had testified that he was engaged as Helper Clerk by the employer in the month of July, 1986 and continuously worked upto 20th September, 1988 and had completed 240 days in each calendar year. Mr. Krishan Dutt, Clerk of the petitioner-Corporation had appeared as RW-1 and had admitted that he had completed 240 days in a calendar year. Mr. Krishan Dutt had also admitted that no notice was issued to the petitioner since he had left the job at his own. He had also admitted the issuance of demand

notice in the year 2001. The Labour Court, on the basis of the statement made by PW-1 and the admissions by RW-1 Sh. Krishan Dutt, had come to a just conclusion that the workman had completed 240 days and was entitled to the protection of section 25-F of the Industrial Disputes Act, 1947. The employer had not placed anything on record to substantiate its plea that it was a case of abandonment and not retrenchment. The plea of abandonment is a question of fact and is required to be proved in accordance with law. The Labour Court had rightly rejected the plea of abandonment raised by the employer.

Mr. B.M. Chauhan, Advocate could not assail the findings recorded by the Labour Court to the effect that the workman had completed 240 days and no notice was issued to him as per law. He then contended that the Labour Court could not award 25% back wages from the date of reference i.e. 21.5.2005 since the reference has been made after about 13 years by the State Government. There is a substance in the submission made by Mr. B.M. Chauhan that where there is inordinate delay in making the reference the Labour Court should not grant back wages.

The Apex Court in ***State of Punjab v. Anil Kumar***, JT 2007 (7) SC 559 has upheld the award passed by the Labour Court though the workman had approached the Labour Court after 13 years but back wages as directed by the Labour Court and affirmed by the High Court were modified. Their Lordships have held as under:

> **"Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.**
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> **In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.**

At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.

In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified."

Accordingly the writ petition is partly allowed. The award dated 24.8.2005 is modified to the extent that though the workman will be entitled to reinstatement but he will not be entitled to get 25% back wages as awarded by the Labour Court. Order accordingly. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 12, 2007
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